

Commission Meeting Minutes January 22, 2015

Chairman Brown called the meeting to order at 2:05 PM. He then acknowledged the other Commissioners present: Commissioners Kate Fitzpatrick, Elizabeth Fontaine, John Langan, James Machado, Robert McCarthy, and Gerald McDonough.

Chairman Brown announced that the Commission meeting is being tape recorded which will be noted in the minutes, that a stenographer is taking notes, and asked that everyone state their names prior to speaking.

PERAC Staff Present: Executive Director Joseph Connarton, Deputy Executive Director Joseph Martin, Deputy General Counsel/Managing Attorney Judith Corrigan, Senior Actuary James Lamenza, Senior Associate General Counsel Ken Hill, Associate General Counsel Patrick Charles, Compliance Officer Thomas O'Donnell, Compliance Counsel Derek Moitoso, Compliance Analyst Cheryl Johnson, Chief Auditor Harold Chadwick, Director of Administrative Services Caroline Carcia, and Senior Executive Assistant Kim Boisvert.

Ms. Boisvert announced the guests in attendance: Nick Favorito from the State Retirement Board, Sean Neilon from the Massachusetts Teachers' Retirement Board, Tom Gibson from the Belmont and Middlesex County Retirement Boards, Paul Shanley from Amity Insurance, Paul Skiffington, George Grimes, Margaret MacDonald and Robert DiSalvatore from the Malden Police Department, Jane Williamson from Doris Wong Associates, and a member from the public Harold Gay.

Chairman Brown then introduced and welcomed Commissioner Kate Fitzpatrick, the State Auditor's MMA appointment, and Commissioner Elizabeth Fontaine, the Governor's Investment appointment.

Chairman Brown notified the group that Mr. Kevin Regan, firefighter and conference planner for MACRS, has passed away and that General Counsel/Deputy Director John Parsons' mother, Hazel Parsons passed away. He then asked for a moment of silence to honor each of them.

Commissioner McDonough made a motion to adopt the minutes of the December 4, 2014 meeting as presented. Commissioner Langan seconded the motion and the minutes were adopted with Commissioners Fitzpatrick and Fontaine abstaining.

Actuarial Update

Mr. Lamenza discussed the updated two page exhibit with pie charts illustrating current public plan investment return assumptions in Massachusetts and nationwide. He recommended decreasing the assumption on 1/1/15 from 8.00% to 7.75% for the State and Teachers' Retirement Systems. Prior to 2013 the State and Teachers' assumptions were 8.25%. They were reduced to 8% as of 1/1/13. Our standard assumption for the local systems has been 7.75% since 1/1/13. He estimated that the combined plans' unfunded actuarial liability (the Commonwealth valuation) would increase by about \$1.8 B. Based on an estimate of the 1/1/15 valuation results, the plan would be fully funded in 2036 (the same time frame as the current schedule which was based on the 1/1/13 valuation).

Commissioner McDonough made a motion to accept Mr. Lamenzo's recommendation to decrease the investment return assumption for the State and Teachers' plans from 8.00% to 7.75%. Commissioner McCarthy seconded the motion.

Discussion ensued whether or not the decrease would require legislative approval, an update regarding the Consensus Tax Revenue meeting, the trend that the investment return assumptions are moving lower than 8%, the ability to increase the revenue stream in the current environment, and if adopted the change would not be effective until 2017.

On the motion to accept Mr. Lamenzo's recommendation to decrease the investment return assumption for the State and Teachers' plans from 8.00% to 7.75%, it was unanimously adopted.

Legal Update

Ms. Corrigan reported on the DALA decision in Boston Police Department v. Boston Retirement Board, Docket No. CR-11-397 (January 9, 2015). PERAC is not a party to this which involves a police officer injured on a police detail. Commissioner McCarty asked for a copy of the briefs which had been submitted in this matter.

Commissioner McDonough made a motion for PERAC to intervene in the case. Commissioner Machado seconded the motion and it was unanimously adopted.

Ms. Corrigan reported on the Barnstable County Retirement Board v. PERAC, Docket No. CR-11-151 (January 9, 2015), and Mr. Charles reported on Robert Vernava v. Swampscott Retirement Board & PERAC, CR-12-640, (12/19/14).

Further discussion ensued about filing an appeal or a Motion For Reconsideration with CRAB as it pertains to the Vernava case. Mr. Gibson briefly provided his thoughts on this issue. He also reported that the Massachusetts Association of Public Pension Attorneys, ("MAPPA") took the unusual step of voting to request PERAC appeal this case.

Commissioner McDonough made a motion to file a motion for reconsideration with CRAB. Commissioner McCarthy seconded the motion and it was unanimously adopted.

Ms. Corrigan explained PERAC's Public Records Request Policy and the procedure for charging for such requests.

Discussion ensued regarding a set criteria for charging individuals to be consistent across the board, the ability to allow discretion as stated in the law, providing information housed versus creating the information in a format requested, emails being considered a public record, being a custodian of public records, and a strong suggestion to take an approach to forward the request to the most appropriate source for the information sought.

It was agreed that a "set criteria" is difficult, particularly when labor is involved. It was suggested that since e-mails are considered public records, everyone should be very careful about what they write in an e-mail. It was further pointed out that sometimes we may not be the

appropriate source for the information sought, in which case seeing that the person is directed to the appropriate place is key.

Mr. Connarton discussed MacAloney v. Worcester Regional Retirement Board and PERAC, in conjunction to the issue at the Malden Retirement Board ("MRB") and the ability to purchase reserve list time. Representative Fallon had requested representatives from PERAC to attend a meeting. Mr. Moitoso attended that meeting and there were several members from MRB who discussed their frustration with the MRB and their inability to purchase their reserve time.

Mr. Connarton stated that Mr. Kevin Morrison (:Mr. Morrison"), Executive Director of the MRB, and its attorney have been invited to attend this meeting of the Commission and both have declined.

Mr. Moitoso explained the issue of purchasing time based on an amount of \$3,000, as discussed in c. 32 § 85H. He stated that there haven't been any challenges regarding this figure with exception of one attorney, who represents multiple systems, and who would like to base the buyback on 10% of the member's starting salary. This may be based upon the military buy back language found at G.L. c. 32, § 4(i)(h). He continued that MRB received a check for buying back the time in one case. However, the System may be holding the check in a drawer to be cashed upon the final decision in the Gomes case.

Mr. Paul Skiffington, Sergeant of the Malden Police Department, explained the chronology in his case, which he prepared starting back in 2001. He notified the Commission of several conversations he had with Mr. Morrison regarding buyback amounts. He further noted that several members recently attended the MRB meeting and were told that the meeting would be delayed due to the Board going into Executive Session.

Mr. Grimes then spoke. He retired on January 2, 2015. He stated that he gave Mr. Morrison a check to purchase his time. He stated that Mr. Morrison and the MRB would not allow him to purchase this time until the Gomes case is resolved which could happen in several years. Mr. Grimes reported that he has appealed the MRB's decision to DALA. He then reported that as of this time the MRB has not cashed the check. He did not say when he presented to check to the MRB.

Further discussion ensued regarding what Mr. Grimes' benefit would be if he had successfully received his time, PERAC Memo # 14/2014 having been distributed to all boards with instructions on how to calculate the benefit, the Board taking the position to await the pending litigation from another system, and questioning the "Executive Session" of the MRB.

Mr. Moitoso stated that PERAC could intervene in Grimes v. MRB. PERAC is already a party in Gomes v. Plymouth and we could move to expedite the cases.

The Commission discussed the quickest way to resolve this, the inability of retirees to make payments back to the system, the concern that Mr. Grimes' check not having been cashed as of this date, the reasoning behind the Board taking the position to stay everything based on a case which may get resolved several years down the road, and how fundamentally unfair this situation is to the members involved.

Commissioner McCarthy made a motion that PERAC intervene and expedite the Grimes matter and demand payments be accepted at this time. Commissioner Machado seconded the motion.

Ms. Corrigan stated that this is a two part motion, one to intervene in the Grimes matter, and if allowed PERAC would be a party to the litigation.

Chairman Brown stated that he believes that it would be better to resolve this issue on a broader level to protect all the individuals in this situation.

Mr. Connarton reported that Mr. Morrison stated that he was not interested in attending the Commission meeting as the Board has no interest in changing its position and used the "car case" as an example.

Commissioner McDonough made a motion for the staff to prepare a letter requiring the MRB to show just cause why PERAC shouldn't issue a Temporary Order and to strongly suggest attendance of representatives for the next Commission meeting. Commissioner Machado seconded the motion and it was unanimously adopted.

Chairman Brown stated that he would like PERAC to provide an array of choices regarding the next steps for the Commission and to provide the most extreme to the least amount of action to resolve this matter.

Commissioner McCarthy withdrew his motion and stated that he would like staff to address the letter to the Mr. Morrison with a copy to all board members.

After further discussion it was decided that the Mayor should also be copied on the letter and the Attorney General should be notified.

Legislative Update

Mr. Connarton stated that Mr. DeVito is currently working on a part time basis due to a health issue and that Mr. Martin would be providing the Legislative update.

Mr. Martin reported that Chapter 492 of the Acts of 2014 was signed by Governor Patrick on January 7, 2015 which allows a disability retiree to earn up to \$15,000 over the difference between their salary and their pension. The law contains no emergency preamble and will become law in 90 days. Currently, superannuation retirees working for the public sector may also earn the difference between their salary and their pension, plus \$15,000.

Audit Update

Mr. Chadwick reported that there is a close out audit for the Athol Retirement System and will be finalized after the Worcester Regional Retirement System receives all the files. He then stated that audits are currently occurring at the Arlington, Boston, Hampden County, Quincy, and Shrewsbury Retirement Boards. He stated that an exit conference is pending for the Leominster, New Bedford, and Revere Retirement Boards. Internal reviews are being conducted on the Lowell, Lynn, MHFA, Stoneham, Pittsfield, State, Teachers', Wakefield, West Springfield, and Woburn Retirement Boards audit reports. Mr. Chadwick stated that PERAC has

received Athol Retirement Board's 2011-2012 audit comments and an internal review is being conducted. He stated that he is waiting for responses from the Attleboro, Blue Hills, and Melrose Retirement Boards for their respective audits. Mr. Chadwick reported that Methuen, Minuteman Regional, Plymouth (no findings), and Webster Retirement Boards audit reports have been posted on the PERAC Web Page since the last Commission meeting and explained their respective findings. Finally, Mr. Chadwick reported that follow up audits have been completed at the Belmont and Fairhaven Retirement Boards then explained their respective results.

Commissioner McDonough stated that one of the findings with the Webster Retirement Board's audit is the lack of having a budget and that the response from the board doesn't mention preparing one. He then inquired if the Audit Unit could follow up on this matter.

Mr. Chadwick stated that he would report back to the Commission at the next meeting.

Commissioner McCarthy inquired about the death benefit ceasing on the date of death.

Discussion ensued regarding this matter, if a spouse does not notify the board of the date of death there could be a request for repayment on the overpayment and direct deposit is a perfect example of what could add to this issue.

Compliance Update

Mr. O'Donnell reported that the educational program has now been in effect for three years and then recapped the education section of the law. He stated that there are many educational opportunities for board members to earn credits. He referred to the chart in the package showing that board members have attended a total of 1,770 courses in 2014.

In regard to the education requirements, Mr. Moitoso explained that there are some positions that have different terms, for example – an ex-officio member doesn't have a term, and some of the county treasurers have a 6-year term. He stated that PERAC has notified the boards that each board member must earn 18 credits over their respective terms. If the member does not meet this obligation he/she will no longer be able to serve on any retirement board. He explained that there are some members who are having issues meeting this requirement.

Executive Director's Report

Mr. Connarton acknowledged and welcomed the two new Commissioners, Kate Fitzpatrick and Elizabeth Fontaine. He then reported on staff activities since the last Commission meeting.

Mr. Connarton then stated that the draft 2015 Commission meeting schedule, with meeting dates on the third Wednesday, has been distributed.

There was further discussion about the dates and timing. The February meeting will be held on Wednesday, February 25, 2015 at 2:00 PM and the following Commission meeting dates will be discussed and presented again for a vote at the meeting in February.

Mr. Connarton reported that we are dealing with an issue at the Framingham Retirement System ("FRS"). There was a back log of their cash books and actuarial data. He believes that the Board has been providing data and has been very cooperative. This issue should be resolved.

Mr. Connarton asked that all Commissioners please acknowledge the Certificate of Receipt for the Open Meeting Law and provide the receipts to Ms. Boisvert.

Chairman Brown asked for a five (5) minute break at 4:05 PM prior to going into Executive Session.

Executive Session

At 4:10 PM Chairman Brown called for a roll call vote of the Commission to go into Executive Session to discuss investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials, and further, to maintain the statutory confidentiality protections afforded retirement board members pursuant to Chapter 32, Section 20C, the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.

Chairman Philip Brown YES, Commissioners Gerald McDonough YES, Kate Fitzpatrick YES, Elizabeth Fontaine YES, John Langan YES, James Machado YES, and Robert McCarthy YES.

Chairman announced that the Commission will reconvene in open session after the completion of the Executive Session.

At 4:11 PM the Commission went into Executive Session.

A roll call vote was taken in Executive Session to return to the regular order of business and to adjourn the Executive Session at 4:20 PM.

Other Business

Chairman Brown stated that the next Commission meeting is scheduled to be held on Wednesday, February 18, 2015 at 2:00 PM and appears to be a conflict for Commissioner McCarthy. It was suggested that the meeting be delayed for a week and be held on Wednesday, February 25, 2015 at 2:00 PM.

Commissioner Machado made a motion to adjourn. Commissioner McDonough seconded the motion, and the motion was adopted. The meeting adjourned at 4:23 PM.

Commission Meeting Documents

Commission Agenda for the meeting for January 22, 2015
Commission Minutes for December 4, 2014

Actuarial Update

Investment Return Assumption Exhibit

Legal Update

Memorandums regarding: Boston Police Department v. Boston Retirement Board, Docket No. CR-11-397 (January 9, 2015), Barnstable County Retirement Board v. PERAC, Docket No. CR-11-151 (January 9, 2015), and Robert Vernava v. Swampscott Retirement Board & PERAC, CR-12-640, (12/19/14)

PERAC's Public Record Request Policy

Correspondence regarding the Malden Retirement Board – Buyback Reserve Time

Audit Update

Recent PERAC Audit Findings cover sheet and the respective audit findings

Compliance Update

Educational attendance chart

Correspondence to and from Norfolk County Retirement System attorney regarding credits for its Chairman and County treasurer pertaining to terms

Executive Director's Report

Updated Staff Activities Memo

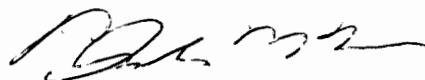
Draft Commission meeting schedule for 2015

Correspondence from the Framingham Retirement Board regarding a comprehensive action plan

Other Documents

Open Meet Law Guide and acknowledgement form from the Office of the Attorney General

Approved:



Philip Y. Brown, Chairman
Public Employee Retirement
Administration Commission